

REMARKS

This amendment is submitted in response to the office action that was mailed on July 13, 2007.

In the office action, the drawings are objected to for informalities. With regard to the objection to Figure 1, a replacement drawing Figure 1 is submitted in which descriptive textual labels are provided, as required. No new matter has been added. With regard to the objection to Figures 2 and 3, the Applicant respectfully disagrees that those figures represent partial views. Each figure is separate and distinct.

In the Office Action, the specification is objected to because the term "sniffing" is not properly defined. The Applicant contends that the term "sniffing" is well known to those of ordinary skill in the computer and computer network art. A search on GOOGLE for "sniffing computer network" reveals numerous hits for this term. Attached are two excepts from About.com and Wikipedia.org which define this term.

Regarding the rejections that were made under 35 U.S.C. §101 and §112, the applicant believes that the Examiner might have misunderstood the invention. The claimed invention is not directed to data transfer. The claimed invention is directed to a method and apparatus to record a data transfer. The claims are thus believed to satisfy §101 and §112.

Despite the fact that the rejections under §101 and §112 are improper, the amendments to the independent claims are believed to traverse the Examiner's rejection under 35 U.S.C. §101 and §112. More particularly, claim 27 now recites a "post-solution" action of setting data in the record to a particular value, which was recited in claim 28, which has now cancelled. Claim 39 now recites a structural element, the function of which is to set a data field to a particular value, which was recited in claim 40, which has now been cancelled. Since claims 27 and 39 recite statutory subject matter, the claims that depend from them also recite statutory subject matter. The amendments to claims 27 and 39 are believed to traverse the rejections that were made under 35 U.S.C. §101 and §112.

Referring now to the rejections under §102, the independent claims have been amended to recite the additional feature of "setting the data in the record to correspond with an indicator that has a byte count less than a byte count of the piece of data." The

applicant believes that the independent claims satisfy 35 U.S.C. §102 because such a limitation is not disclosed in U.S. pat. 6,240,452.

As for the rejection under §103, the applicants disagree with the Examiner's contention that claims 28 and 41 are not patentable under 35 USC 103(a). It is submitted that the claimed invention in both amended claims 27 and 38 would not have been obvious to a person skilled in the art.

Welch Jr. et al US 6,240,452 B1 teaches a method and apparatus for monitoring file transfers and logical connections in a computer database featuring a file transfer record database. According to Col 5, Line 5, an embodiment of the system "determines the context of each file transfer packet exchanged during a connection" such that the system is "well suited for non-technically trained network managers trying to determine how computer network is being used and how a computer network should grow".

Welch teaches a system of presenting network information to the non-technically trained person for the purposes of monitoring the network. Apart from the features already described in Col 5, Line 5 of the document, Welch identifies the problem of prior art network monitor tools, recognizing that in existing presentation of network data is difficult to understand for non technically trained persons and attempts to solve these problems by recording and presenting the information such that each packet exchanged by the computer network is not an "atomic event" and thereby provide additional knowledge to non-technically trained managers to interpret the data. (See Column 1 from line 40 to line 50).

In the present patent application, the system as defined by the independent claims is arranged to monitor and record a transfer of data such that large volumes of data recording the transfer of data can be kept to a minimal size by the use of specific counters in the records and the ability of normalizing or compressing these records. The Examiner is directed to the fact that the present application is concerned with the number and size of the records that can be generated in recording the transfer of data and how the number and size of these records can be reduced. (See page 1 of the present application).

It is also submitted that Welch teaches a completely different system when compared with the present application since Welch is directed to the presentation of

network information to non technical people, whilst the present application is directed to the storage and handling of records describing a transfer of data. Furthermore, even when Welch is combined with Shah et al, the two documents cannot establish a *prima-facie* case of obviousness as Shah et al teaches the design and implementation of hardware counters. The applicant cannot understand how it is possible to combine a network monitoring system arranged to present information to non-technical people (Welch et al) and a document describing the architecture of a computer hardware counter to disclose the features of the present application.

Shah et al is directed to the design of a statistics counter for use within computer hardware context including routers, ATM switches and Ethernet switches that may be applicable to a networking environment. With respect to the Examiner, the Examiner is directed to the fact that Shah et al is a document that discusses specifically the design and maintenance of computer counter hardware. The Examiner will note that on page 107 the goal of this paper is to "quantitatively analyse the problem of maintaining these counters". Furthermore, in page 107 Shah et al further discusses the problems of bandwidth within a memory read/write context. This is further disclosed in page 108 where Shah et al further describes the design of the Counter Management Algorithm (CMA) along with the consideration of such aspects such as access rate, size of SRAM and various other aspects relate to the design of computer hardware including aspects such as size, bandwidth and the consideration of SRAM and DRAM. Without going further, it is clear this document is concerned with hardware design and not network log management. It is submitted that a skilled addressee would not have any motivation or suggestion to combine a disclosure of Welch and Shah et al.

Furthermore, the Examiner is directed to the current invention as defined by the amended claims, which now include the features of setting the data in the record to correspond with an indicator that has a byte count less than a byte count of the piece of data. The applicants believe that the Examiner mis-interpreted this claim prior to this amendment by incorrectly construing the term "count" in the claims are directed to the size of the record rather than a "counter" in the sense of computer hardware. Accordingly, there can be no motivation or suggestions to combine Shah et al with Welch since Shah et al is directed to design and implementation of counter architecture.

It follows that due to the difference in nature between Welch and Shah at el, there can be no reasonable chance of success by simply combining the two disclosures as is indicated by Welch which teaches a system of presenting network information collected by generating or updating records, storing information relating to network traffic. A combination with computer hardware design concerning counters will not reasonably result in any particular advances since the two subject matters are significantly different and with respect to the Examiner, irrelevant.

Finally, it is submitted to the Examiner that the combination of Welch and Shah at el cannot disclose all of the features in the claims of the present application. As the present application does not involve the design and implementation of "counters" or their architecture or any other specific computer hardware design, it is therefore submitted that the features of the newly amended claims cannot possibly be disclosed but a combination of Welch and Shah at el. Accordingly, the applicant's ask the Examiner to withdraw the objection that the claims are not patentable under 35 USC 103(a).

Reconsideration of the pending claims is respectfully requested.

Respectfully submitted,



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